N. C. RICE, JR.

IBLA 97-221 Decided August 25, 2000

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring mining claim abandoned and void. UMC 361493.

Affirmed as modified.

1. Mining Claims: Generally--Mining Claims: Determination of Validity--Mining Claims: Location--Mining Claims: Relocation--Mining Claims: Withdrawn Land

While failure to record a mining claim with a County recorder within 30 days of the date of location may not, in and of itself, render the claim invalid under Utah State law, a withdrawal or classification of the land by the United States, prior to any corrective action by the claimant, operates as an adverse right rendering the claim invalid. Where a mining claim is staked and notice is posted on Sept. 4, 1996, but notice of location of the claim is not filed with the County recorder until Nov. 26, 1996, and where the land on which the claim is located is withdrawn from operation of the mining laws on Sept. 18, 1996, the claim is properly declared null and void ab initio. This is because, owing to the failure to record within 30 days as required by State law, there was no valid "location" of the claim under 43 C.F.R. § 3831.1 at the time of the segregation, rendering the claim null and void ab initio.

APPEARANCES: Daniel B. Frank, Esq., Budd-Falen Law Offices, Cheyenne, Wyoming, for Appellant; John W. Steiger, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

N. C. Rice, Jr., has appealed the January 13, 1997, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the Hallelujah mining claim (UMC 361493) abandoned and void.

The facts are not in dispute. On December 2, 1996, BLM received a notice of location (NOL) for the Hallelujah lode mining claim from N. C. Rice, Jr., along with $135 in filing fees. That NOL indicated that the claim was being located in NW¼SE¼, SW¼NE¼ sec. 6, T. 40 S., R. 2½ W., and that the claim was "dated and posted on the ground" on September 4, 1996. 1/ The NOL also bears a date stamp indicating that it was recorded with the Kane County (Utah) Recorder on November 26, 1996.

On December 11, 1996, BLM notified Rice that additional information was required. It advised that "the Township 40 S. and Range 2½ W., as identified on the NOL, does not exist in the Salt Lake Meridian." BLM also noted that no map had been submitted. BLM held that, "in order to meet the requirements of 43 CFR 3833.1-2, [Rice] must submit in writing the correct township and range and a map outlining the mining claim within a section." BLM provided Rice 30 days to comply.

On December 23, 1996, Rice submitted additional information, including a map of the claim and an amended NOL and $5 filing fee. He advised BLM that the "correct location is township 40 S and Range 2 W"; his amended NOL bore that correction.

On January 13, 1997, BLM issued the decision under appeal, declaring the claim "abandoned and void":

> In the State of Utah, the NOL must be recorded with the County Recorder within 30 days from the date of posting. The date of posting as identified on the NOL is September 4, 1996. The 30th day is October 4, 1996. However, the subject NOL was recorded with Kane County Recorder on November 26, 1996.

(BLM Jan. 13, 1997, Decision at 1.) BLM cited 43 C.F.R. § 3831.1, which provides:

> Manner of initiating rights under locations. * * * A location is made by (a) staking the corners of the claim * * *, [2/] (b) posting notice of location thereon, and (c) complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc.

BLM also cited 43 C.F.R. § 3833.5(b), which provides:

> Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the other requirements of Groups 3700 and 3800 of this title, and

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1/ The description did not indicate which principal meridian the description referred to. It is evident from the record that it is the Salt Lake Meridian.

2/ The regulation provides for an exception for placer claims which is not relevant here, since the claim at issue is a lode claim.

with laws and regulations issued by any State or other authority relating to locating, recording, and maintenance of mining claims, mill sites, and tunnel sites located, held, and maintained upon the public lands of the United States.

Finally, BLM quoted Utah Code 40-1-4: "Within thirty days after the date of posting the location notice upon the claim the locator * * * must file for record in the office of the county recorder of the county in which such claim is situated a substantial copy of such notice of location."

BLM noted the rule that, a "classification of the land which segregates that land from appropriation under the mining laws has been held to constitute an adverse right which will invalidate a mining claim located and posted prior to segregation but not recorded as required by State law, until after the segregation," citing Thomas Stoelting, 70 IBLA 231 (1983). BLM also noted that the land on which the claim was located "is within the Grand Staircase-Escalante National Monument," and that "this land is closed to mineral location as of September 18, 1996." 3/ BLM concluded that "[i]nasmuch as the subject NOL was [not] recorded with the county recorder until after the segregation date," the claim was "declared abandoned and void."

Rice (Appellant) filed a timely notice of appeal of BLM's decision. He notes that he located his claim on September 4, 1996, on "unwithdrawn land," as the lands were not withdrawn for the Grand Staircase-Escalante National Monument until September 18, 1996. (Statement of Reasons (SOR) at 2.) Appellant concedes that the provision of 43 C.F.R. § 3831.1 (quoted above) sets out the requirements for initiating an unpatented mining claim. He stresses that, under 43 C.F.R. § 3833.0-5(h), the "'Date of location' * * * means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated." (SOR at 3.)

Appellant notes that the laws of the State of Utah require a claimant "to erect a monument at the place of discovery of a mining claim and post thereon a notice of location containing the name of the claim, the name of the locator, the date of the location, and a description of the claim" (citing Utah Code Ann. § 40-1-2) and to "distinctly mark on the ground the boundaries of the claim" (citing Utah Code Ann. § 40-1-3). Id. Although he does not affirmatively state in his SOR that he took those actions, his NOL states that his claim was "dated and posted on the ground" on September 4, 1996.

Appellant concedes that the laws of the State of Utah require a claimant "to file with the county recorder a copy of the notice of location within thirty (30) days of posting the notice of location upon the claim," but argues that "the failure to record a notice of location with the county recorder does not forfeit title to a claim," citing Atherly v.

3/ BLM has subsequently explained that the lands were withdrawn from mineral entry on that date. Appellant does not dispute that fact.

Bullion Monarch Uranium Co., 335 P.2d 71, 72 (Utah 1959). He explains that, in Atherly, the Utah Supreme Court clarified that the "locator's title to a mining claim under the mining laws is initiated by the discovery of mineral coupled with the segregation of the claim from the public domain by the marking of the boundaries thereon." Id. He asserts that, under Utah State law, the timeliness of the recordation of the claim with the County recorder does not affect the validity of the claim, 4/ and that an estate vests immediately upon completion of discovery, the marking of boundaries, and the posting of notice at the claim. The Utah law, he claims, does not cause forfeiture of the claim for failure to record (or, presumably, for failure to record timely) with the County recorder. (SOR at 4.)

[1] The authority of the Department of the Interior is limited to establishing the rights of a mining claimant as against the United States. Rights as between rival mining claimants are determined by State law. The Department's determination of a claimant's rights against the United States is controlled by its regulations and adjudicatory precedent. Both dictate that we affirm BLM's decision invalidating Appellant's claim.

BLM's decision is completely in accord with Departmental case law. We note that BLM did not hold (as Appellant suggests) that his failure to record an NOL timely with the State invalidated his claim. It held instead that a "classification of the land which segregates that land from appropriation under the mining laws * * * constitute[s] an adverse right which will invalidate a mining claim located and posted prior to segregation but not recorded as required by State law, until after the segregation." That rule, set out in Thomas Stoelting, 70 IBLA at 234 (which BLM cited), was previously set out in R. Gail Tibbetts, 43 IBLA 210, 225, 86 I.D. 538, 545-46 (1979) (overruled in part, Hugh B. Fate, Jr., 86 IBLA 215, 226 (1985)), and H. B. Webb, 34 IBLA 362 (1978). Thus, the fact that the claim was not recorded timely does not control; it is the fact that the claim was not recorded until after the segregation that is significant.

4/ Appellant cites the following:

"Discovery with intent to claim is the principal thing and vests an estate -- an immediate fixed right of present and exclusive enjoyment in the discoveries. The record is incidental machinery to secure to the discoverer his reward and to give notice to others. The spirit of all recordation acts is notice to protect others against secret equities. If the record is not necessary to create the estate (as it is in the matter of homestead exemptions and mechanic's liens), the statute providing for recording is but a direction to do certain acts and does not create conditions subsequent; and if the statute provides no forfeiture for failure to record, by failure the estate is not divested."

Atherly at 73-74 (quoting with approval Clark-Montana Realty Co. v. Butte & Superior Copper Co., 233 F. 547, 555 (D. Mont. 1916), aff'd, 249 U.S. 12 (1919)).

We note that, under Federal law, failure to record a copy of the NOL with BLM is fatal to the claim. See 43 U.S.C. § 1744 (1994).

The question presented here is whether Appellant's rights to an unrecorded mining claim were cut off by the United States' withdrawal of the lands on which it is located from mineral entry and the concomitant segregation of those lands for inclusion in a National Monument. In Dutch Creek Mining Co., 98 IBLA 241 (1987), we considered this question in the very similar context of whether a claimant's rights to an unrecorded mining claim were cut off by the withdrawal by the United States for consideration of the lands for selection by the State of Alaska pursuant to the Alaska Statehood Act. Contrary to Appellant's belief, in that case, as here, the failure to record the NOL with the State did not, by itself, invalidate the claim. See id. at 248 (citing Sakow v. J. E. Riley Investment Co., 9 Alaska 427 (D. Alaska 1939)). Nevertheless, we held that mining claim had been invalidated by the segregation that followed the State's application:

> While failure to record a mining claim as required by State law does not, in and of itself, render the claim invalid, other events, such as a withdrawal or classification of the land by the United States, prior to any corrective action by the claimant, may operate as an adverse right rendering the claim invalid.

Id. at 249. We had previously announced a similar rule in R. Gail Tibbetts, expressly addressing mining claims governed by Utah State law:

> [W]hile the failure to record the mining claim as required by Utah State law does not, in and of itself, render the claim invalid, the withdrawal of the premises of the United States, prior to any corrective action by the claimant, would serve to nullify the claim.

43 IBLA at 225-26, 86 I.D. at 546. This rule was directly applied in Thomas Stoelting, 70 IBLA at 234.

We perceive no reason to diverge from this rule in the present case. Appellant asserts that this rule should not be followed because it ignores the fact that, under Utah State law, a location is not invalidated simply because a claimant does not timely record notice with the County recorder. (SOR at 6.) That disregards the fundamental principle that (as the Utah Supreme Court expressly noted in Atherly) Utah State law does not govern how or whether the failure to timely record notice of the County recorder affects the claim's validity as against the United States. See R. Gail Tibbetts, 43 IBLA at 225, 86 I.D. at 546. The ruling by the Utah Supreme Court that a discovery of a valuable mineral with intent to claim, by itself, vests an estate and that failure to record does not result in forfeiture of such estate, protects the claim only from competing claims of other private parties (or, possibly the State itself) and does not render the claim immune from invalidation by the United States. Thus, it is not true, as Appellant asserts (SOR at 7-8), that his claim vested against the United States on September 4, 1996, because, under State law, his failure to record timely did not invalidate the claim as against other private parties.

Departmental regulations also support BLM's decision here. For an unpatented mining claim to vest any rights against the United States, the claimant must make a "location." Under 43 C.F.R. § 3831.1 (quoted above), a "location" is defined as (a) staking the claim, (b) posting notice of the claim at the site, and (c) "complying with State laws, regarding the recording of the location in the county recorder's office, discovery work, etc." From this it ineluctably follows that, unless and until a claimant complies with State laws governing the recording of the location, the claimant has not made a "location" and has not gained any rights against the United States. Although his imperfect location might, under State law, give him rights as against other private parties, it does not, under Federal law, give him rights as against the United States. 5/

Since Appellant had not recorded his claim in compliance with State recordation laws on September 18, 1996 (the date the lands were withdrawn from mineral entry for inclusion in the Grand Staircase-Escalante National Monument) he did not have a valid location under 43 C.F.R. § 3831.1 and therefore had no rights as against the United States as of that date. 6/

We do not agree with the characterization in BLM's decision of the action that it took here, namely, declaring the claim "abandoned and void." That term is generally applied to claims that are invalidated because of failure to submit adequate annual maintenance fees. BLM was not declaring the claim abandoned and void on account of Appellant's failure to record with the County recorder within 30 days. What actually transpired here was that Appellant's claim was not established as of the date of the withdrawal of the lands from mineral entry. To the extent that Appellant sought to have his claim recognized following recordation after the date of

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5/ Thus, we do not accept Appellant's conclusion that "the Utah statute requiring recording, but placing no penalty for failure to record, has precisely the same effect to the United States as if Utah had no law requiring mining claims to be recorded." (SOR at 9-10.)

Nor are we convinced that the Utah statute "plac[es] no penalty for failure to record." There is plainly a penalty for failure to record under Utah State law, namely, loss of the claim where a competing claimant without actual knowledge of the previous claim locates the same land. See R. Gail Tibbetts, 43 IBLA at 225.

6/ It is unnecessary to consider in the present case whether recordation with the County recorder of notice of a mining claim after the date of the withdrawal, but within the 30 days allowed for recordation under Utah State law, might constitute compliance "with state law regarding the recording of the location in the county recorder's office" under 43 C.F.R. § 3831.1 and therefore establish a valid location that would preserve the claim against the operation of the withdrawal. The claim herein was not recorded with the County recorder until long after the 30-day period prescribed by State law.

It is also unnecessary to address whether recordation with the County recorder of notice of a mining claim after the 30-day period allowed for recordation under Utah State law, but before a withdrawal, would preserve the claim against the operation of the withdrawal.

the withdrawal, his claim should properly have been declared null and void ab initio, since the lands were no longer open to entry at that time. 7/ We modify BLM's decision accordingly.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified, and the Hallelujah mining claim (UMC 361493) is declared null and void ab initio.

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David L. Hughes
Administrative Judge

I concur:

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James L. Byrnes
Chief Administrative Judge

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7/ It is well established that a mining claim located on lands at a time when they are not open to mineral entry confers no rights on the locator and is null and void ab initio. See, e.g., Ronald A. Pene, 147 IBLA 153, 157 (1999); Richard K. Hatch, 145 IBLA 264, 266 (1998).